1: Hoebel NO6 Comanche NO6

627

/For informal ingroup justice, see Category 116, pp. 51-66, 69-76, 78-79, 85-106. --Analyst/

1: Hoebel E-5 (1933) 1940 NO6 Comanche NO6

"But you listen, I deny this thing. Now look out! I am going to smoke too. If you are putting the lie on me, the sun will get you instead." That put a different complexion on the situation; the husband was not begging for such a bargain. "So," as That's It put it, "he called off his sun-killing and gave his wife sugar-words."

Later another husband called the deal and paid the price. A man named Brother-in-law, according to Holding Her Sunshade, tried his wife on false evidence. When he put her to the curse, she made her denial and ended by calling to the supernaturals, "If he cuts off my nose, grant that he shall not live long." Brother-in-law accepted the challenge. He did cut off her nose, and within a month he was dead.

In earlier days when such notions had not yet occurred to women, there were, nevertheless, other escapes, if the aid of a powerful practitioner could be enlisted. For in the case of Looking For Fun, we have one fortunate woman who was able to dodge death through the invocation of strong counterpowers.

Case 30. Adultery, Conditional Curse: Looking For Fun
Informant: That's It

"Her husband suspected her of adultery. This Looking For Fun denied. So her husband made sun-killing. Smoking to the powers, he first addressed the sun saying, 'You, Father, know the truth of this matter. As you look down on them don't let them live till fall.'[9] Then to the earth he said, 'You, Mother Earth, as you know what is true, don't let them live a happy life on you.' Whereupon he gave the pipe to his wife that she might make her self-curse.

Even though she was guilty and knew it, she swore to the powers, 'Sun, if you don't believe me, then let me perish. Mother Earth, if you don't believe me, let it be true that I won't live right upon you! Whatever he says, let it be true!'

"That ended the ceremony.

"After a few months Looking For Fun had fainting spells and began to waste away. She was frightened and went to a medicine man for help. He told her to wait to see what his powers offered. After three or four days he came to her and said he believed that the husband's charge was true! The great powers were punishing her. At this she owned up. She told the medicine man she had not confessed because she was afraid of what her husband would do to her. As for the curse, she said she didn't believe in its power and so had lied about it. The medicine man told her that that being the situation, it was too dangerous a matter for him to handle. His power was not strong enough to cope with the sun. He recommended that she take her case to another medicine man who was a specialist in such matters. Looking For Fun was eager and asked her adviser to tell her mother of the situation. The medicine man

[9] Compare this wording with the Crow Indian conditional curse in coup-counting disputes—"It was I struck the enemy. Sun, as you looked down, you saw me. May the one who lies die before winter." R. H. Lowie, *The Crow Indians* (New York, 1937), p. 217.

3: Wallace & Hoebel E-4, 5 (1933, 1945) 1952
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684 walk. A cut nose was a social disgrace which was extremely difficult to live down. However, since these public marks had a tendency to decrease the value of a woman should the husband transfer her to another man, erring wives were not always disfigured. Nevertheless, Colonel Dodge reported seeing one Comanche woman with four separate gashes in her nasal organ,[12] while Kills Something claims to have known a woman with five. These were all legal penalties which it was the privilege-right of the husband to impose.

As for the offending male correspondent, in every case save four, he had, in conformity to law and custom, to pay damages to the husband. Comanche law required the aggrieved husband to prosecute. Public opinion forced him to, for if he held back, he would stand as a lily-livered coward before all The People. No man risked that. Thus, although the aggrieved husband was in fact prosecuting a wrong against himself, he was also put in a position of maintaining the public standards, whether he wanted to or not. He was in a sense a public prosecutor as well as the protector of his own private interests.

627 681 The payment of damages loomed so large in the interests of the Comanches that they coined a word for it—*nanɛwɔkɔ*. Such settlements were ideologically in sets of four different kinds of articles: horses, guns, blankets, and clothing. More often than not, they were paid only in horses, numbering from one to ten. Almost inevitably the demands of the husband, if he was a warrior of any consequence, included the favorite horse of the defendant as essential to his satisfaction. His personal prestige had been hurt by the affront, and it was his intent to re-establish it by forcing the aggressor into the humility of giving up that which was most dear to him. It was more than a "money" equivalent that was sought, for it was all part of a prestige battle.

627 In initiating the procedure, since there were no courts or assizes to be waited upon, action could be instituted at any time. The case was carried to the offender wherever he could be found. The aggrieved could prosecute by accosting the defendant himself, stating the offense and the amount of damages necessary to satisfy him; he might send a third party to prosecute for him; or he might send or accompany a group who stated the charges and then negotiated.

[12] R. I. Dodge, *The Plains of the Great West*, 304.

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Prosecution procedure was by bargaining. The defendant was seldom confronted with witnesses. The aggrieved had to ascertain the guilty party before he took steps against the defendant. In wife-absconding the presence of the woman with the absconder was sufficient evidence. In case of adultery, evidence came from witnesses or by confession of the wife. When the evidence was obtained and the guilty party had been revealed, the defendant could then be confronted. The bargaining normally began with the guilt accepted by both sides. When the defendant denied guilt, the legal prosecution of the case was ended unless proof of guilt was at hand. The aggrieved might take extralegal steps by committing some act of violence, but that would likely lead to retaliation.

It was possible, if the absconder was afraid of the erring woman's husband, for him to place himself under the protection of an outstandingly brave warrior. This made his chances in the bargaining much better. As another possibility, the aggrieved was allowed the privilege of obtaining the aid of friends. A show of force on the side of the plaintiff was a strong factor in checking illegal action. Such an institutionalized procedure made possible a sort of justice by assuring that the guilty and the wronged parties were placed on a bargaining level.

Cases were opened with formal politeness and smooth words. The defendant was told the charges and what must be given in damages to satisfy the plaintiff. Ordinarily the negotiation took place outside the door of the defendant's tipi, since the defendant was usually aware of the nature of his visitor's business and did not invite him inside. The damages rendered were those which the defendant agreed to give and which the aggrieved agreed to accept. There was no judge to set the amount, nor was there any rigid customary code regulating the amount of damages in accordance with the degree of wrong, except as it placed a ceiling of ten horses on any settlement. Only by agreement could the case be settled. Naturally, if the defendant were a brave warrior and the plaintiff a timid soul, the compensation would be low. If the aggrieved were a brave warrior, the defendant might acquiesce to the first demands. Damages were also concluded in accordance with the wealth of the offender; the prosecutor "stuck" the defender for the most he believed he could squeeze out of him.

The Comanches

●627 Although it was unusual to resort to fighting and killing over the loss of a woman, society theoretically recognized the right of the offended male to take the life of the offender if he refused to make settlement after guilt was established.

Should the accused deny his guilt, either party might appeal to the supernatural powers as a way out. When accused by an irate husband, one informant denied that he "had broken the law." His accuser proposed that they make smoke and call on the Sun. The informant smoked and then addressed the Sun: "Sun, if what I say is not true, strike me dead. If I am not guilty, strike my accuser dead." When he heard these words, the accuser withdrew his charges and thereby ended the whole affair.[18]

It was, as we have already noted, incumbent upon the husband to seek damages. If he demanded damages and received a satisfactory settlement, his claim upon his wife could be released, thus making legal a divorce and consequently freeing her to change her marital status. In case of divorce or separation, the children legally remained with their father. In many cases the husband took the wife back.

[587 684] A woman who remarried after the death of her husband without first getting a verbal, but formal, quit-claim from her husband's youngest brother was technically guilty of desertion; her new husband was subject to *nanewɔkə* demands, and he had to pay up.

Breaks Something was the unwitting victim of such an action, as his own account shows.

« « « Mexican was a friend of Touched with a Closed Fist. They called each other brother. When Touched with a Closed Fist died a long time ago, Mexican went to claim the widow for his wife. That was Woman. Woman didn't want to live with him, so she came to me.

We were living down at Red Store when one day two men came to see me. They were Mangy Coat and Atsaci. We talked, and then they said they had come to get damages for Woman. I was surprised. I asked them which one of them had a claim on her.

They answered, "We have come to you from Mexican. He was the brother of Touched with a Closed Fist and this woman is his wife."

[18] Informant: Kills Something.

3:Wallace & Hoebel E-4, 5 (1933,1945)1952
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I called her and asked her if she were married to another man. 627

"No," she said. She denied having anything to do with him or wanting to have anything to do with him.

I was satisfied. Then I turned to those two men and asked what Mexican wanted in claim.

They answered that he wanted a certain horse I had got from a dead friend, another horse, a saddle, and a Winchester.

I told them that I would not part with that first horse. It was dear to me. I told them I would give them another just as good.

Atsaci answered, "We want that horse or none."

I tried three times to get them to agree on another horse, but they refused. Finally, I told them, "All right, if you take that horse, you get nothing but that horse. It is enough." I had something else to say, too, and I told Atsaci I wanted to tell him something after we finished.

"What?" he said.

I told him not to forget that he was married to two of my "daughters" (they were daughters of my brother). In these words I spoke to him. "If I accept these terms, and you insist on that horse, you can have it. But if you do, you will lose your two wives. I will take back my daughters from you. You are my son-in-law and yet you are not caring what you say; you are trying to get the horse I love."

Then Mangy Coat broke in right away. He said that Atsaci wasn't thinking about what he was saying. He said they would agree to take another horse.

That was what I wanted. Atsaci was silent. He was ashamed. He was really older than I was and he had forgotten about being my son-in-law in that way. Then I asked him what he had to say to the agreement.

He mumbled, "Well, it's up to Mangy Coat. He is older than I am. It's up to him to have the say." Well, I told them I was willing to do the right thing, so I gave them a gray mare, a bay horse, a good saddle and a gun. Later on that gray horse got to be a very good racer and won lots of money.[14] » » »

The role of intermediaries in damage-seeking actions is the most

[14] Hoebel, *The Political Organization and Law-Ways of the Comanche Indians*, 56–57.

3: Wallace & Hoebel E-4, 5 (1933, 1945) 1952
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• 627 interesting theoretical aspect of Comanche law. A really strong man pressed his own cause. Yet in the nature of the Comanche scheme of things, the wife-stealer or adulterer was frequently a man of more aggressive courage than the husband he victimized. Men who had brothers to rally to their side could muster their aid as a matter of course. For some men of weak families this was not always possible, however, although if they failed to collect even token damages, neither they nor the tribe would consider them worthy of being Comanches. It was socially required that they act, yet by themselves they could not do so. In the crude legal genius of the Comanches this was recognized as an impossible demand upon some men; hence they devised a way out that could be used without disgrace. Any man of faint heart could call upon a great warrior to act as his surrogate, his champion at law. His response was assured; no warrior of reputation would have it imputed that he was afraid of any other man. He stood ready to pit his prestige against the aggressor on behalf of any weaker plaintiff. He received no fee or compensation in kind for risking his life in intervention. The *nanɛwɔkɔ* that he wrested from the defendant went to the plaintiff. The reward of the champion was the praise of the people and added luster to his name.

The case of Red Crooked Nose (*ɛkamutawa*), as given by She Invites Her Relatives, reveals the champion in action; it also displays the suicidal *beau geste* of the Comanche who died honorably against the enemy, so to recover in perpetuity the prestige he had lost when outfaced within the tribe. He also set a check against unreasonable overpenalizing of future defenders. Comanche law was law with limits, as is any good law system.

« « « The wife of Red Crooked Nose absconded with a young, good-looking warrior. In the raiding party were four other men and another woman. For two years the pair remained away, and no one in the main camp knew where they were living. But one day some hunters found their camp and reported it to Red Crooked Nose. He was determined to get his wife back, but he had few war deeds to his credit. So he asked a brave, well-known warrior to go with him. The warrior consented to go.

When they reached the absconder's camp, the woman saw them

3: Wallace & Hoebel E-4, 5 (1933, 1945) 1952
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coming and ran to her young husband, saying that she wanted to stay with him. But when the young man saw Red Crooked Nose's champion he said, "Against such a man I have no chance to keep you." 627

So they met outside the tipi. Red Crooked Nose picked up a quiver of arrows belonging to the young man, but his wife told him, "Put them down. You can't do any better with them than their owner can."

Food was offered the newcomers, and they stated their mission. They said that they would accept no damages in place of the woman, that Red Crooked Nose needed her to care for their young child. So the young man ordered her horse brought, upon which was a good saddle, a silver-braided bridle, and good blankets. He told the woman to dress up. He told her, "Take everything nice that belongs to you. This old man can't get things like these for you."

She gathered all her belongings, including fifteen horses. She was ready to start back with them, but she cried pitifully to have to leave her young lover. After they started, she lagged behind sullenly.

They had gone. The young absconder broke camp. He mounted and rode on past them. As his horses ran by, Red Crooked Nose killed one of them and called upon his party to take the meat he had shot for them. Then the owner of the dead horse scorned him, "My feelings aren't hurt. I can get plenty of horses—like the grass, so many!" and he rode on.

He knew that Red Crooked Nose would not have dared to kill his horse without the warrior as protector.

While stopping one night, they heard that enemies were coming. The women were sent on. The men prepared for war. Before the battle started, the young man donned his best war paraphernalia. With his feathers flying, he rode past the camp of Red Crooked Nose. He fought conspicuously and was killed.

The champion saw him go down.

He called to Red Crooked Nose, saying, "It was we who caused him to be killed. I know you are a coward, but you have to go and walk in front of the enemy to protect us while I carry off his body."

Thus they took the young man off the field and put his body on a horse. When the woman saw his body brought back, she tore her dress apart, slashed her body all over with her knife, and cut her

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627 hair off short. She embraced his body and wanted to throw her jewelry away in mourning. But the people pulled her away, telling her to keep it in remembrance of him.

Red Crooked Nose and his champion rode up and mourned him. Then he was wrapped in blankets and buried. The camp broke up and continued on its way.[15] » » »

In a few rare instances an inversion of the institution of the champion was employed, as in the case of the husband who was so afraid of the warrior who stole his wife that he sent an *old woman* to try to get his wife back for him. The absconder said he was going to keep the woman, but he sent back a horse loaded with goods in her place.[16]

Whether by force or by insinuating himself upon the grace of the great aggressor, Comanche law and custom guaranteed compensation to a husband, if not necessarily the return of his wife.

627 682 For murder, however, there was no adjudication or compromise. Indeed, the murder of a fellow tribesman was most unusual, but it sometimes happened. In such an event, the *lex taliones* was invoked; the punishment of the murderer was primarily the concern of the murdered man's relatives. The case was not closed until the kin of the dead man had taken the life of the murderer. But the privilege of a revenge killing might not be recognized by the kin of the murderer. Kinsmen could legally strike back.

However, kin organization was weak; the principle of kinship liability was not sufficiently pronounced to result in feud. There was no ruthless taking of life of whoever happened to be related to the murderer. The kin feeling was strong enough, however, to induce the kin of the murderer to protect him for some time. As long as vigilance was maintained, an attempt on the life of the murderer was unlikely, for legal right usually gave way to determined resistance. In actuality it was extremely unlikely that a murder resulted in a deadly clash between groups of kin. Tribal consciousness checked a possible internecine war. But note that the responsibility for obtaining justice rested with the relatives and friends of the dead. This is the first principle of collective liability.

[15] *Ibid.*, 62–63.
[16] *Ibid.*, 53.

3: Wallace & Hoebel E-4, 5 (1933, 1945) 1952
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A group might intervene to stop a fight, yet it had no legal authority to do so. The offended party, if disposed to compromise, had the privilege of accepting a commutation and releasing the murderer, according to David G. Burnet's observation in 1824.[17] This was seldom the case, however, and by mid-century, if our informants are correct, it was out of the question. Comanche law was hardening through the decades in this one respect. The murderer might flee the camp to another band and thereby escape vengeance for an indefinite period, if he was lucky. Whether or not any kind of settlement was reached, the man who had done the killing was usually more or less ostracized by his fellows. It made no difference how prominent the man might have been or how good his family, should he shed the blood of a fellow tribesman, a stigma was cast over his family and his relatives shared in the disgrace. The matter was not only talked about, but might even blight the lives of his children after his death.

Those who committed murder were often men of great bravery whose success in war and whose standing in the tribe had made them somewhat arrogant and impatient of those who did not do as they demanded. Other men committed murder in revenge.

In Comanche law the killing of a murderer by the kinsmen of the victim was a privileged act. *It did not lead to feud.* A killing called for a counter-killing. And there it stopped. The society at large and the kin of the murderer also recognized and granted the privilege-right of the execution of the murderer by the hand of his victim's brothers. This made it a truly legal sanction. No single case contravening this norm in action is remembered by any Comanche informant. The Comanches in this remarkable (in the light of the usual feudal tendencies of primitives) self-imposed restraint raised this aspect of their law to a higher than ordinary level for people of their general cultural attainments.

Favorite horses were so endowed with personality that killing a man's favorite horse was akin to killing his brother. The owner might, and sometimes did, kill the horse-slayer in return.[18]

A wrong committed by one member of a kin group against an-

[17] Burnet, "American Aborigines, Indians of Texas," *loc. cit.*, Vol. I (May 15, 1824), 154.

[18] Cf. Hoebel, *The Political Organization and Law-Ways of the Comanche Indians*, 68–72.

3: Wallace & Hoebel E-4, 5 (1933, 1945) 1952
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627 other individual within the same group was not punishable in the same way as a wrong done by an out-grouper. Public opinion might be strongly antagonistic to the wrongdoer, but the settlement of even murder was not considered a matter for "legal" interference by society. Therefore, murder was essentially a wrong and only vaguely a crime. The family group or kin could punish a member of their own group. There does not appear to have been any definite custom. What happened inside the kin group was the business of nobody outside the group; and inside the group, the way of handling a situation depended largely on personality and temperament.

627 562 One variation of the in-group character of in-group action was the privilege-right of the husband to kill his wife. For this, retaliation appears to have been abnormal. The legal position of woman was largely that of chattel, and upon marriage she passed from the original family to the husband. That the kinship group showed no inclination to retaliate when a husband killed his wife—their genetic relative—can mean nothing else than a true relinquishment of the kinship bond upon marriage in favor of a supreme marital bond. The kin of the erring wife might plead with the husband or offer him gifts to prevent the killing, but there was nothing to compel him to accept them and forego meting out punishment. Furthermore, society recognized the right of a brother to kill his sister who, disregarding the recognized social pattern of brother-sister avoidance, came into his presence in violation of his wishes. The brother-in-law of Kills Something shot his sister for such an offense.[19] Apparently, in such a case the killer suffered no social disgrace.

The privilege-right of a husband to kill his wife was paralleled by his privilege to handle her most cruelly in an attempt to force her to name a suspected lover. He could take her out to a lonely spot and choke her until she informed. Or he might prefer to hold her prone over a fire, slowly lowering her closer and closer to the flames, until she in anguish confessed and named her lover. There was no device in Comanche law by which a husband with a grievance could seek an impartial judgment on the alleged male miscreant in the case. Guilt had to be certain before the legal suit could begin. When there was doubt as to the facts, the hapless women were the goats.

[19] Informant: Kills Something.

3:Wallace & Hoebel E-4, 5 (1933, 1945) 1952
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Men also killed their wives at times when they suffered chronic ailments and medicine cures had failed. A case is reported of a chief who cut the throat of his wife, who had been ill for a long time, to avoid the inconvenience of caring for her. After making "medicine of preparation" to fit her for a happy reception in the land of spirits, he took her life, though mourning her untimely death. Such deeds were rare, however.

In spite of the legal right of a husband to kill his wife, a man who killed his wives too recklessly was considered "mean" by the people. Yet, if he were insensitive to such disapproval, and particularly if he were brave enough to maintain his status through coups, there was little to stop him, except that new wives became more difficult to get. On the other hand, attempts of wives on the lives of husbands were rare indeed.

Of acts taking on a criminal tinge there was only one category—excessive sorcery. Among other Plains tribes violation of the communal buffalo-hunt rules, i.e., going out to hunt alone or beating the signal for the mass charge, was one of the most severe public offenses. The military society police in charge of the hunts were wont to handle any such miscreant roughly. But the Comanches were the great exception.

Ralph Linton has suggested that a superabundance of bison on the Southern Plains made formal police sanctions functionally unnecessary for the Comanches; however, the historical evidence cited earlier indicates that food was not always easy to come by. However this may be, it is quite evident that the Comanches felt no need to make a crime of violation of the rules of the communal hunt. Furthermore, unlike the other Plains tribes, who felt the need and also had an admirably suited mechanism at hand for fulfillment of the need, the Comanches with their Shoshonean background possessed no military societies. They let the matter ride.

Sorcery that got out of hand was another matter. The Comanches were only slightly plagued by witchcraft. As Ruth Benedict once observed, "Sorcery is a fear-projection, and the Comanches were not ridden by fear."[20] Ralph Linton has emphatically reiterated that only old men, who could no longer compete on a warrior basis, turned to

[20] In conversation with Hoebel.

7: Richardson D-4 (no date) 1929
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622 became demoralized through contact with the white race and the desperate struggle for existence this brought about, the chiefs exercised more authority.[15] Cases of the formal arraignment and
622 trial of a warrior or chief, were exceedingly rare, if such ever
627 occurred; for the writer has never discovered a well authenticated record of such a procedure. A chief or leading brave might lash
[578] a boy or woman, but to strike another brave or chief generally meant a feud or civil war. Differences between tribesmen were settled by those directly concerned or by the relatives of the slain party. Of course, the law of an eye for an eye prevailed, but generally the heart of the offended party could be softened by judicious gifts. Generally the chiefs could make the men behave while they were in their presence and most men followed the admonition of their elders and leaders as a matter of course.

595 Polygamy was common, but before the advent of the white race
684 and its demoralizing influence on the savages the chastity of Comanche women rated high. During the period of Anglo-American relations it was not uncommon for a woman to run away from her husband in company with a spouse more to her liking. Traditional Comanche law provided that in such cases the offended husband might punish the woman by cutting off her nose, but this horrible practice was not always followed. In at least some cases the husband took back his erring spouse and rejoiced in his good fortune at being able to recover her.

221 For sustenance the Comanches depended almost entirely on game,
224 particularly the buffalo. These animals were generally hunted on horseback and brought down with the lance or shot with arrows at close range. Dependable authorities state that at times the Indians would drive the arrows completely through the carcass of the animal.[16] The natural tendency was for the bands to follow the buffaloes in their northward and southward migration, which practice made a sedentary existence impossible. At certain seasons, when the animals were fat, the hunt became a tribal affair and the slaughter of the great beasts took the shape of a cooperative

15. It is Mooney's opinion that the authority of the Kiowa chiefs suffered a sharp decline as a result of the advent of the white race and it is likely that the same thing occurred among the Comanches. See the Kiowa Indian Calendar, as cited, 233.

16. See Marcy, Exploration of Red River, as cited, 98.

21: Burnet T-5 (1818-1819) 1954 N06 Comanche N06
Texas

[ca. 1818] 000

auxiliary to an otherwise impotent authority. The pains 175
and penalties of their criminal laws, are confined almost
exclusively to the weaker sex. The incontinence of a wife, 562
is punished by cutting off her nose. This odious abscission 175
is made from the junction of the cartilage and bond, ob- 684
liquely down to the lip. Several instances of this shocking
penal infliction are now extant. But the sentence of muti- 175
lation is sometimes remitted in consequence of the interpo- 696
sition of male connections. The decisions of the law always
yield to a determined resistance.

If one man wantonly kills another, the nearest friend 175
of the deceased, is permitted, and indeed it devolves upon 627
him as a duty, to revenge his death, by taking the life of 682
the murderer. But the price of blood, may be commuted
for articles of more value and convenience than blood, and
murder may be atoned for, and the spirit of revenge ap-
peased by liberal donations to the living relatives of the
deceased. Such atrocities however, seldom occur. Notwith- 175
standing the extreme laxity of their whole economy of gov- 571
ernment, and their entire exemption from legal restraint,
they live together with a degree of harmony that would do
credit to the most refined and best organized societies. The 175
little bickerings and jealousies and inordinate strivings for 578
thrift and distinction, that disquiet and mar the social circles
of refinement, are unknown to the rude and simple children
of nature.

The Comanchee system of religion is about as perfect 175
and luminous as that of their jurisprudence. They believe 771
in a Supreme Being, and in a future state of existence, but
have adopted no mode or manner of worship. Indeed they 175
consider the Supreme Being, to be so far removed from them 771
as not to wish to interfere directly, in their temporal con- 776
cerns, and as equally unwilling to be interfered with. They [775]
therefore leave him to enjoy his repose without molestation,
and expect the same indulgence for themselves. They have
no idea of a special superintending Providence, or that the
Great Spirit takes any particular cognizance of the actions
of men. And they consequently defer all their devotional 175
concerns, if indeed they entertain any, to a dark futurity, 771

24: Richardson H-4 (no date) 1929 NO6 Comanche NO6
(1854-1859) Texas

657 army advised him that if he felt insecure he could move the agency to a point nearer the new site. Thus for a while no troops were stationed nearer than eight miles from the agency. Now, when the troops moved out of Old Camp Cooper the Indians moved in and stored their grain and hay there. But soon a detachment of troops was ordered back to the old post and the Indians had to move out.[17] It seems that thereafter some troops were stationed continuously at the old post, but later the agent complained that the force consisted of but fifteen or twenty men—not enough to be of much aid in an emergency. During the crisis in June, 1859, when the frontier citizens were threatening to attack the reservation, an adequate cavalry force was stationed there and maintained until the Indians were removed.[18] However, it must be said that during much of the four years of the reservation's history the United States Army did not give the protection which even its limited means might have permitted.

Problems of the Agents

The vexations incident to controlling, teaching and starting on the road towards a civilized existence several hundred nomadic savages just taken from the prairies and confined to a reservation of a few square miles were too numerous to be adequately described. Sometimes the conduct and practices of the savages were enough to have exhausted the patience of a saint and that they were dealt with so successfully is a credit to the white men in charge.

578 Savage lawlessness and lack of self restraint naturally provoked clashes between individuals of a tribe where freedom of action had so recently been limited by this new environment. In a [627] fit of anger one of the head men stabbed his wife and her brothers vowed to avenge her wrong. The husband's friends came to his 657 side and a general fight seemed dangerously near. But, much to the surprise and relief of the agent, the guilty Indian came to him in a penitent mood and offered to receive any punishment that [683] might be imposed. The agent left the matter to the other chiefs and quite naturally nothing was done. The woman recovered and [627] her brothers apparently became reconciled.[19]

[113] 17. T. T. Hawkins, special agent to investigate conditions on the reservation, to Charles E. Mix, October 30, 1858. Ms. University of Texas photostat copy.
[113] 18. Neighbors to Greenwood, June 10, 1859. Thirty-sixth Congress, First Session, Sen. Exec. Doc. No. 2, p. 456.
[113] 19. Baylor to Neighbors, June 8, 1856. Ms. University of Texas photostat copy.

29: Hoebel E-4,5 (1933) 1969 NO6 Comanche NO6

and actually in many, a girl had no formal voice in the choice of her husband. Her brothers gave her away in exchange for a consideration. The takers were usually older and established warriors and hunters who had the goods. In the Comanche ideal such arrangements made for the best marriages. But they were marriages in which the woman was at the mercy of her husband. Working against the stability of such marriages was a strong current of romantic idealism among the young. The ambition of the adolescent girl was to be a *naiβi*,[8] i.e., a beautiful maiden with lustrous, black hair hanging in long braids, and dressed in a fine fringed buckskin dress. The young bucks for their part strove to attract the attention of the girls by playing the role of *tuiβitsi*: "a handsome young man who looks good on a horse." Wife-absconding was really an escape in which a frustrated wife sought a more romantic match with a daring warrior.

Comanche elopements were invariably linked to a war party. The man in the case would be going on a raid with his friends, and he would make an assignation with the woman to go along. It was a way provided by custom to violate the marriage rights of the rightful husband as defined by custom and sustained by law! A nice example of internal inconsistency in the ways of a culture.

When a woman and her lover took off with a war party, two courses were open to the jilted husband. He could mount in hot pursuit in the hope that he could overtake them before they reached enemy territory. Or he could bide his time until they returned from the raid. In enemy country he could not press his suit; here all Comanches had to stand shoulder to shoulder. Aside from this, he could institute his action wherever he might be able to confront his tortfeasor. He might take along some compatriots—brothers, real or putative—to strengthen his courage and his arm, if need be. A real man, however, went alone. It was not necessary for him to gather witnesses, for a Comanche legal action was in no sense a trial. Questions of evidence rarely, if ever, entered. The wife-stealer, or even the adulterer, had no desire to conceal his deed; his aim was to flaunt his prestige in the face of the challenged husband.

If he followed the dictates of decorum, he politely addressed the defendant as "brother." The defendant replied in kind. Did not Comanche brothers share their wives? Syllogistically the reasoning runs:

> Men who share a wife are brothers.
> This man has assumed a share in my wife.
> Therefore, he is my brother.
> (But he is going to pay for the privilege!)

The immediate goal of the prosecuting husband was to get *nanewɔkɔ*, restitutive damages. As an opening gambit he placed his demands high,

[8] Phonetic symbols are used as in the International Phonetics System.

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customarily asking for four different kinds of articles (four was the mystic number in which most Indians conceived things). Horses were always demanded, numbering from one to ten. The size of the demand varied directly with the wealth of the defendant and the fortitude of the husband and inversely with the war record of the defendant. The husband hoped to squeeze out as much as the traffic would bear and the wrongdoer was willing to yield.

The defendant on his side would pay in the end, but it would be unseemly to yield readily or to first demands. The procedure was one of higgling and haggling—with always the risk of a violent breakdown in the offing. For the husband, if mean-tempered or short of patience, might well cut the palavering short with a quick attack upon the defendant. Theoretically, then, the injured husband had recourse to use of physical force, if the offender failed to recognize his duty to pay up with a settlement that was reasonable in the eyes of the injured party. In fact, however, this was not a genuine legal privilege-right, since in event of homicide retaliation prevailed. The husband who pressed his suit to the killing point was bound to be slain in turn by the defendant's kinsmen. Here was the fatal weakness of the primitive system of the Comanches. Yet in forty-one of the forty-five recorded adultery and absconding cases the offender paid up and the matter became *res judicata* with an award in favor of the plaintiff. It is evident that the Comanches had a strong sense of the fitness of the law and that, willful as they were, wrongdoers submitted to its dictates.

This condition was implemented by two facts: (1) action was not initiated unless the facts were predetermined—guilt, as we have said, was rarely an issue except in sorcery cases; (2) the elopement pattern worked to tone down the first burst of anger; (3) usage saw to it that the husband could in the final resort always muster a greater amount of force than could the defendant.

In the nature of things, the adulterer or wife-absconder was (or thought he was) a more dangerous man than the husband he was wronging. If he had been left wholly to his own resources, the aggrieved husband would more often than not have been in a poor way to exact restitution. In the achievement of justice Comanche practice saw to it that if the husband were man-to-man on the short end of the power stick, he could marshal his brothers or friends to go a-lawing with, or for, him. When confronted with this deputation, the defendant rarely had recourse to marshaling *his* friends or brothers. It was not good form. And more than that—he had made his bid for prestige, and he would surely look bad if he failed to carry it through alone.

The plaintiff who called to his brothers for help naturally lost prestige to some degree, and in addition he had to turn over all that he received in damages. His "lawyers" got the a' of it.

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Comanche society in the nineteenth century was constantly recouping its losses by incorporating captives into the tribe. Such captives were taken as children and mildly exploited as houseworkers, if they were girls, or put to work as herders, if boys. The girls were ultimately married by their captors and so acquired full citizenship. The boys were allowed to join war parties and they, too, were incorporated after a time into the kinship system through adoption as "brothers" or "sons" by their captors or some other Comanche friend. Some captives, however, although they achieved free status in manhood, were not absorbed into a family by adoption. Conversely, attrition so decimated a number of Comanche families that only one or two males were left as survivors. These men and unadopted captives had no brothers upon whom to call when hard put to prosecute a wrong. In such a plight there could be no justice for them if left to their own resources. Aggressors would have a free hand.

At this point the Comanches met the social need for a check on aggression and the provision of redress by means of a simple utilization of the materials at hand. They held no constitutional convention to devise new instruments of government. Personal power was the recognized basis of social relations between men. Power out of control was the threat. Controlled power was the countercheck naturally hit upon. The weak-kneed victim of aggression who had no kin to back him turned to some great warriors to press his cause for him "A brave, well-known warrior," runs the stock phrase.

The brave, well-known warrior simply took over the case on behalf of the injured party and prosecuted it as his own. It gave him a neat chance to face down an upstart warrior, to serve his own ends of self-glorification while acting in the interest of the general social welfare—not against it. He could add to the luster of his status while upholding the law of marriage, instead of flouting it. Vanity and social altruism were wedded in one act and both were exploited for the social good. Their gratification was the sole reward, for the warrior champion received no compensation nor any share of the damages collected.

The intervening warrior was acting as a legal champion. He made no pretense of judging the case or of mediating. He entered with the aim of *forcing* the defendant to pay damages exactly as the injured party would have forced him, if he could. And if damages could not be squeezed out, he personally assaulted the defendant with all the violence he could muster. The ultimate sanction was his to use, if need be.

Comanche procedure in the wife absconding cases never involved questions of fact, for fact and evidence were cleared in preliminary investigation by the husband. He had no problem; the presence of the wife with her lover was enough. Adultery, however, was usually surreptitious. And this posed problems. To meet them the suspecting husband had recourse

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to several violent privilege-rights. A married woman could be wholly at the mercy of her husband's whim. He was free to extort from her a confession, as well as the name of her lover, by use of the cruelest third-degree methods. He either choked her until she gasped out the required information, or he took her out to a spot some distance from the camp where he built a fire over which he slowly lowered his terrorized wife until she gave him the information he wanted.

More refined men put the matter in the hands of the Sun and Earth. They took their wives to a lonely spot for *taβ βekat*, "sun killing." The suspecting husband filled his ceremonial pipe and smoked to the great powers, addressing first the sun. "You, Father, know the truth of this matter. As you look down upon them don't let them live until fall." Then to the Earth he said, "You, Mother Earth, as you know what is true, don't let them live a happy life on you."

Thereupon the wife smoked the pipe and avowed her innocence with an appeal to the Sun and Earth to kill her if she lied. Comanche dogma has it, and supporting cases are offered, that when women made this ritual conditioned curse, the Sun knew if they were guilty, and it killed them. Its penalty for perjury was death.[6]

Women, for their part, had no demand-rights against their husbands that they be faithful in marriage; they could exact no penalties from them. Hence, they had no opportunities to put their husbands to the test. But in recent decades some did turn the tables by demanding of the Sun and Earth, when they took the oath, that the powers kill the husband if the wife were innocent of the act.

Finally, it should be noted that when the issue was put to the Sun and Earth, no legal action against the corespondent followed. The death of the wife ended the matter.

On the other hand, the collecting of damages from the offending male did not necessarily absolve the wife. If her absconder was strong enough, she had a good chance of escaping her husband's ire. But she ran terrible risks. In seven of forty-five Comanche adultery and wife-absconding cases the women were slain by their husbands—one in seven! Three of these were adulteresses; four were absconders. Of the twenty other adulteresses five were mutilated by their husbands; four had their noses cut off, and one had the soles of her feet slashed so she could not walk.

One may wonder that any Comanche woman played the game against such odds. We see it as additional evidence that mere severity of the law is not enough by itself to make people behave.

The Comanche law of murder was most simple. For a Comanche husband to kill his wife—with or without good cause—was not murder.

[6] Hoebel, *Political Organization and Law-ways*, pp. 90–91.

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It was an absolute privilege-right, which not even her family would move to challenge.

On the other hand, for one Comanche male to kill another was never a privilege-right, even when applying force to an over-stubborn defendant. Any willful killing required a revenge killing of the slayer. Here was the fatal weakness of Comanche law, as indeed of so much primitive law. The culture provided right ways of procedure and defined the substance of tortious acts. But the primacy of the kin group came to the fore whenever a prosecutor felt he had pushed negotiation as far as it would carry and then had taken recourse to arms. The kin of the defendant whom he had killed did not accept the killing, although general public opinion may have held that the victim had it coming to him. The Comanche kinsmen took revenge on the prosecutor regardless of the rightness of his original grievance. In enforcing the law he lost his life, a victim of *lex talionis*.

However much Comanche law fell short in this respect, custom remedied the defect in another. Blood-revenge killing was only of the first killer and retaliation did not lead to feud. The kinship principle, while extant, was nevertheless weak among the Comanches, and general fighting within the tribe was not to be countenanced when there were always outside enemies to be confronted. The killer, and the killer alone, had to die. There it stopped. No religious sanction, no tribal authority, was necessary to suppress the feuding tendency. Custom was sufficient restraint, and in this the Comanches were fortunate, for thereby they escaped the self-renewing curse that plagues so many primitive law systems.

Willful killing of a man's favorite horse was an act akin to murder, especially if the horse had been bequeathed to him by a best friend. Retaliation was taken not in killing the favorite horse of the transgressor but in slaying the transgressor himself. A favorite horse had a legal personality and was equated with a human being. Consequently, no further blood revenge followed, for things were already equal: a man for a horse.

Every Comanche male at one time or another went on a vision quest in search of power. He did not abase himself before the supernatural spirits or masochistically mutilate and torture himself to arouse their compassion. Nor did he weep before them to arouse their pity. Unlike the tribesmen of the Plains to the north, he assumed that the spirits were generally benign toward him; they needed no coaxing to share the benefits of their power with him. If he fasted and waited in a lonely place, they would help him. Nor did they interfere in his daily living except as they put conditions on the use of the power they gave him. A Comanche had to observe no supernatural tabus save those that went with his own personal medicine. Under Postulate VIII[A] most Comanche medicine men used their powers to help the people. They cured and used their medicine to bring success in war and the hunt. They even, for a contractual consideration, helped others

A [See category 181, p. 69--Analyst]

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to get a share in their power. Although they were paid for their healing efforts, they did not attempt to milk the public or use their supernatural potency for exploitative purposes. Comanche magic was mostly white.

Occasional older medicine men, however, became "mean medicine men." Unable any longer to maintain their prestige by war prowess, they struck out at enterprising youngsters. They shot their medicine into them. The detection of sorcery was the job of a curing medicine man. In the first instance, after diagnosing the nature of the illness and who caused it, he always tried to effect a cure with a counter medicine. If he was successful, nothing more was done. If he failed, legal action was in order. The brothers of the sorcerized victim would call upon the sorcerer to remove the curse. If he refused, which he usually did by denying that he had anything to do with the affair, they could move to an attack with weapons or the threat of such an attack. But whether they did or not depended upon their strength of character. In sorcery cases where the aggrieved party was a weakling (and apparently not backed by brothers) there was no prosecution; and one Comanche, Salt Worn Out,, even shifted to another band, to get out of the sorcerer's sphere of influence.[7] In one instance where the aggrieved brothers started an apparently forceful prosecution, they backed down when the sorcerer put up an even more forceful defense—a threat of *more* sorcery.[8] In the event both parties took equally strong positions, one accused sorcerer took a voluntary conditional curse on the sun—and was killed by lightning the following spring. Thus he paid the price of his guilt.[9]

In another instance the alleged sorcerer was forthwith stabbed and killed by his own sister's son, the brother of his victim. The slayer's elder brother was appalled by the act. But Chew Up, the knife wielder, retorted, "Is it as nothing that I should sit and watch my brother being murdered? Should I have done nothing?" And here there was no blood revenge in counteraction, "Because" in the very words of a Comanche, "the quarrel was in the family, no one else could take it up or do anything about it."[10] Homicide was not legally a tribal or public affair.

The cases in general indicate that the Comanches preferred not to tangle with sorcerers. A cure by a good doctor was much to be preferred. This failing, a kinsman did not have to prosecute as did a cuckolded husband, but he legitimately could, if he had the guts. Otherwise the individual act of sorcery went unpunished. Brave warriors as champions at law did not enter these cases. A warrior outfacing another warrior was one thing, but to have to threaten a sorcerer was not an inviting prospect for even the bravest.

[7] Hoebel, *Political Organization and Law-ways*, case 25, p. 92.
[8] *Ibid.*, case 24, p. 91.
[9] *Ibid.*, case 23, pp. 89-90.
[10] *Ibid.*, case 27, pp. 94-95.

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Repeated sorcery was another matter. As among the Eskimos it became a threat to all the people—a threat not to be borne. The fact that the sorcerer was believed to have killed a number of people was evidence that he was "getting away with murder," evidence that no one dared to face up to him. In the need to remove the threat to their common security the members of the band drew together in the sole communal action that the Comanches took against any sort of offender. They lynched him. Or together they tricked him into breaking his tabus so that he died of the effects of his own powers. In each of these instances his fate was discussed and ordained in a meeting of all the men of the band. Excessive sorcery thus became the sole crime in the Comanche legal system.